

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Resident  
Insurance Producer's Application  
of Jill Christine Vigilante

**FINDINGS OF FACT,  
CONCLUSIONS, AND  
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson on Thursday, February 9, 2006, at 9:30 a.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Commerce ("the Department"). Jill Vigilante, 26251 180<sup>th</sup> Street N.W., Big Lake, Minnesota 55309, appeared on her own behalf, without an attorney. The OAH record closed at the conclusion of the hearing on February 9, 2006.

**NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the office of Kevin Murphy, Deputy Commissioner of Commerce, 85<sup>th</sup> Seventh Place East, Suite 500, St. Paul, Minnesota 55101-2198, for information about the procedure for filing exceptions or presenting argument.

Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

## **STATEMENT OF ISSUES**

The issue presented in this case is whether the Department's denial of the Respondent's application for a resident insurance producer should be affirmed because the Respondent has demonstrated untrustworthiness and financial irresponsibility in violation of Minn. Stat. § 45.027, subd. 7(4), by virtue of having entered guilty pleas in 1995, 2000, and 2003 to issuing worthless checks; filing for Chapter 7 bankruptcy, which was discharged on April 1, 2003; and being ordered by the Stevens County District Court in April of 2003 to reimburse MinnesotaCare for health care services provided to her son during the period from September 1, 2002, to March 31, 2003, when it was determined that she had the ability to contribute to her son's support.

The Administrative Law Judge recommends that the denial of the Respondent's application be affirmed.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

## **FINDINGS OF FACT**

1. The Respondent, Jill Vigilante, is a 42 year old woman, who has been employed in recent years as a nurse. She has been a licensed practical nurse since 1990 and a registered nurse since 1998, but is seeking a career change.<sup>[1]</sup>

2. The Respondent attended training and took and passed the insurance producer's test. She applied to the Department of Commerce for a resident insurance producer's license on or about December 15, 2005. The Respondent checked "yes" in response to a question on the application asking whether she had ever been "charged, indicted, pleaded to, or convicted of any criminal offense in any Court" other than misdemeanor traffic violations. She also submitted a form authorizing the Department of Commerce to conduct a criminal background check.<sup>[2]</sup>

3. On September 15, 1995, a complaint was filed in Stevens County charging the Respondent with a misdemeanor count of issuing a worthless check. The complaint alleged that on or about July 16, 1995, the Respondent purchased merchandise from a Pamida store with a check in the amount of \$20.00, the check was returned unpaid marked "NSF," a notice of dishonor was mailed to the Respondent on August 14, 1995, the receipt returned from the postal service indicated that the letter was signed for by the Respondent, and the Respondent had not paid any part of the money owing by the date of the complaint. The charge was dismissed on September 20, 1995, because the Respondent paid the store the amount she owed.<sup>[3]</sup>

4. On December 16, 1999, a complaint was filed in Stevens County charging the Respondent with a misdemeanor count of issuing a worthless check in violation of Minn. Stat. § 609.535, subd. 2. The complaint alleged that, on or about October 6, 1999, the Respondent purchased groceries and cash from a Coborn's store with a check in the amount of \$20.00 and the check was returned unpaid marked "NSF." The complaint alleged that a notice of dishonor was mailed to the Respondent on October 22, 1999, the receipt returned from the postal service indicated that the letter was signed for by the Respondent, and the amount remained unpaid by the date of the complaint.<sup>[4]</sup> The Respondent had offered to pay the store the money she owed once she found that her check had not cleared the bank, but the store did not want to accept payment at that point.<sup>[5]</sup> On April 3, 2000, the Respondent entered a guilty plea to one misdemeanor count of issuing a worthless check and was fined \$80.00.<sup>[6]</sup>

5. On June 6, 2001, the Minnesota Board of Nursing issued a \$500 civil penalty and a reprimand to the Respondent for violation of Minn. Stat. § 148.261, subd. 5, based on her administration of a dose of morphine sulfate to a nursing home resident in excess of the prescribed amount. The resident did not suffer any adverse reaction as a result of the excessive dose.<sup>[7]</sup> There has been no further disciplinary action against the Respondent's nursing license since that time.<sup>[8]</sup>

6. On March 17, 2003, a complaint was filed in Sherburne County charging the Respondent with a gross misdemeanor count of issuing a dishonored check in violation of Minn. Stat. § 609.535, subd. 2. The complaint alleged that, on or about January 17, 2003, the Respondent purchased merchandise at Elk River Meats store with a check in the amount of \$347.16, the check was returned unpaid and dishonored, and a notice of dishonor was mailed to the Respondent but the amount remained owing.<sup>[9]</sup> The Respondent realized a few days after writing this check that she had forgotten to enter a prior check in her checkbook. She went to the business and brought cash with her, but they informed her that their policy was simply to turn the matter over to the authorities.<sup>[10]</sup> On May 22, 2003, the Respondent entered a guilty plea to an amended misdemeanor count of issuing a worthless check. She was sentenced to 90 days in jail and fined \$1,000. Execution of the 90-day sentence and \$900 of the fine was stayed for one year and the Respondent was placed on probation with the condition that she pay restitution to the business and have no same or similar convictions. By December 17, 2003, the Respondent had paid \$347.16 in restitution as ordered by the court.<sup>[11]</sup>

7. During 2003, the Respondent and her husband filed for Chapter 7 bankruptcy. The bankruptcy was discharged on April 1, 2003.<sup>[12]</sup>

8. The financial difficulties and bankruptcy of the Respondent were in part due to the spending habits of her former husband, whom she divorced in

November 2003. During their marriage, she worked as a nurse in the Twin Cities and was frequently away from home during the week. Her husband was not employed after they were married. He took out loans without her knowledge and did not inform her about bills and NSF notices. When the Respondent and her husband decided to sell their house prior to the divorce, she discovered for the first time that there were liens on it. She was advised by her attorney to file for bankruptcy before filing for the dissolution of her marriage because of the loans and debts that her husband had incurred that she knew nothing about.<sup>[13]</sup>

9. During a nine-month separation prior to their divorce, the Respondent's husband assumed sole responsibility for their oldest child and the Respondent assumed responsibility for their three younger children. Her husband filed for medical care under MinnesotaCare for himself and the older child. The State ultimately commenced an action by the State to obtain reimbursement from her. The Respondent immediately entered into an agreement with MinnesotaCare and the County and told them to garnish her wages to ensure that she did not miss a payment.<sup>[14]</sup> Based upon that agreement, the Stevens County District Court issued an order in May of 2003 finding that she had not contributed to the support of that child during the period from September 1, 2002, to March 31, 2003, despite having the ability to do so. The Court ordered that the Respondent pay the amount of \$1,019.49 as reimbursement for past medical and dental expenses and pay \$143.47 per month beginning in April 2003 to be applied to the child's medical/dental/health expenses.<sup>[15]</sup>

10. The Department of Commerce reviewed the Respondent's application for a resident insurance producer's license and related documentation and determined that the application should be denied under Minn. Stat. § 45.027, subd. 7(4), based on its view that the Respondent has engaged in acts that demonstrate that she is untrustworthy and financially irresponsible and thus is unqualified to act under an insurance producer's license.<sup>[16]</sup>

11. The Department issued an Order Denying License Application, Statement of Charges, and Notice of Hearing on February 3, 2006, setting the hearing for February 9, 2006. The Respondent was contacted by the Office of Administrative Hearings regarding the hearing date and was willing to go forward with the hearing on the scheduled date.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

## **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondent under Minn. Stat. §§ 14.50 and 45.027, subd. 7.

2. The Respondent received due, proper and timely notice of the charges against her, and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural legal requirements.

4. The burden of proof in this proceeding is on the Respondent to show by a preponderance of the evidence that she should be granted a license in this matter.<sup>[17]</sup>

5. The Commissioner of Commerce may deny an application for a resident insurance producer's license if the Commissioner finds that it is in the public interest to do so and the applicant has "engaged in an act or practice, whether or not the act or practice directly involves the business for which the person is licensed or authorized, which demonstrates that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the commissioner."<sup>[18]</sup>

6. The Respondent has engaged in acts or practices that demonstrate that she is untrustworthy, financially irresponsible, or otherwise unqualified to act as a resident insurance producer, and it would be in the public interest to deny the Respondent's license application. To the extent that the application denial is based upon the Respondent's prior criminal convictions, those convictions directly relate to the occupation for which the license is sought under Minn. Stat. § 364.03, subds. 1 and 2, due to the nature of the crimes and the relationship they bear to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the occupation.

12. These Conclusions are reached for the reasons discussed in the Memorandum below. The Memorandum is hereby incorporated into these Conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED: that the Department's denial of the Jill Vigilante's application for a resident insurance producer's license be AFFIRMED.

Dated: March 13, 2006

s/Barbara L. Neilson  
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BARBARA L. NEILSON  
Administrative Law Judge

Reported: Tape Recorded (not transcribed); 1 tape.

### MEMORANDUM

In the Notice of and Order for Hearing filed in this matter, the Department alleged Respondent is not entitled to a resident insurance producer's license based on its view that she has engaged in acts demonstrating untrustworthiness and financial irresponsibility. The Department acknowledged that the Board of Nursing discipline and the MinnesotaCare reimbursement, standing alone, probably would not have caused the Department to deny licensure to the Respondent. However, those matters, combined with the Respondent's bankruptcy and the issuance of three worthless checks in the past, caused the Department to be concerned about issues of financial responsibility and trustworthiness. The investigator indicated that the Department might issue a license to an applicant who had worthless check convictions dating back 15 to 20 years, but not to someone who, like the Respondent, has issued two or three worthless checks within the past ten years.

Although the Respondent alleged that she is aware that some individuals have been licensed despite a criminal history involving check forgery or worthless checks, she did not provide any details regarding this allegation and the Department investigator testified that he was not aware of the issuance of licenses to anyone with a forgery conviction. The Administrative Law Judge has been unable to locate any such cases in the contested case archives maintained by the Office of Administrative Hearings.<sup>[19]</sup>

There are extenuating circumstances with respect to the Respondent's financial difficulties because she apparently lacked knowledge about her ex-husband's accumulation of debt during their marriage. However, the Respondent still bears responsibility for being aware of her financial situation (whether joint or individual), avoiding the issuance of worthless checks, and remaining solvent so as not to have to declare bankruptcy. It is commendable that the Respondent is taking steps at the present time to ensure that she pays bills promptly, does not accumulate debt, and knows her bank balance. She testified that she has set a budget, uses automatic withdrawal where possible, rarely writes checks, limits the number of credit cards she carries, and checks her bank account balances on the internet on a daily basis. All of these actions suggest that she is now

taking responsibility for her finances, and she should be commended for these efforts.

Based upon the evidence as a whole, however, there simply is not a long enough track record at this point to be assured that the Respondent has the requisite financial responsibility to be entrusted with an insurance producer's license. Insurance producers deal with client monies and must handle funds properly and ensure they get into the correct account. Although the Respondent's nursing disciplinary matter and the MinnesotaCare reimbursement have little, if any, bearing on her financial responsibility and trustworthiness, the Respondent's history of writing worthless checks in 1995, 1999, and 2003, and her bankruptcy proceeding in 2003 do have a significant bearing on these matters, and weigh against issuing her an insurance producer's license at the present time.

**BLN**

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<sup>[1]</sup> Testimony of Respondent; Ex. 11.

<sup>[2]</sup> Ex. 1.

<sup>[3]</sup> Ex. 2; Testimony of Cameron Jenkins, Respondent.

<sup>[4]</sup> Ex. 3.

<sup>[5]</sup> Testimony of Respondent.

<sup>[6]</sup> Ex. 3.

<sup>[7]</sup> Ex. 6; Testimony of Respondent.

<sup>[8]</sup> Testimony of Respondent.

<sup>[9]</sup> Ex. 4.

<sup>[10]</sup> Testimony of Respondent.

<sup>[11]</sup> Ex. 4.

<sup>[12]</sup> Ex. 5.

<sup>[13]</sup> Testimony of Respondent.

<sup>[14]</sup> Testimony of Respondent.

<sup>[15]</sup> Ex. 7.

<sup>[16]</sup> Testimony of Cameron Jenkins.

<sup>[17]</sup> Minn. R. 1400.7300, subp 5.

<sup>[18]</sup> Minn. Stat. § 45.027, subd. 7(a)(4).

<sup>[19]</sup> Several of the cases located by the Administrative Law Judge upheld license denial or disciplinary action against individuals who had engaged in check forgery. See, e.g., *In the Matter of the Application for Real Estate Salesperson's Licensure of Bubar*, OAH Docket No. 1-1005-12900-2 (2000) (multiple criminal violations, including writing stolen and forged checks, warranted denial of license); *In the Matter of the Real Estate License Application of Equal Net*, OAH Docket No. 12-1005-11920-2 (1998) (summary disposition granted to the Department finding conviction for forgery justified denial of license application); *In the Matter of Insurance Agency License and Securities Agent License of Jones*, OAH Docket No. 4-1004-11553-2 (1998) (summary disposition granted to Department authorizing disciplinary action against insurance agent who engaged in theft and check forgery).